



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 6, 1998

Mr. Marion Andrus McCollam
Executive Director
Cultural Arts Council of Houston and Harris County
3201 Allen Parkway
Houston, Texas 77019-1800

OR98-1863

Dear Mr. McCollam:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117271.

The Cultural Arts Council of Houston and Harris County (the "council") received a request for information concerning the artist grants program and the awarding of grants under the program. The requestor submitted a form, to be filled in by the council, seeking the following categories of information concerning each artist:

- (1) artist name
- (2) ethnicity
- (3) activity
- (4) location
- (5) total score
- (6) score in each category, including the educational component, neighborhood based project portion, serving underserved communities, quality, and reasonableness of the project
- (7) Amount asked
- (8) Amount received
- (9) Panel comments

The council created a document in response to the request, which it provided to the requestor. That document provided each applicant's ethnicity, total average score, the amount requested and approved, the nature of the activity, and the location of the activity.

We note initially that a governmental body is not generally required to create new documents in response to a request for information. Open Records Decision Nos. 452 (1986)

at 3 (open records request applies to information in existence when request is received), 362 (1983) at 2 (city does not have to supply information which does not exist). Thus, while the council may choose to fill in the forms supplied by the requestor, the council is not required to create a new record in the form sought by the requestor to comply with an open records request.

You submitted to this office as responsive to the request grant applications that include artist names, addresses, telephone numbers, social security numbers and driver's license numbers, along with attachments of resumes, samples of work, photographs, bills, a transcript, a marriage license, income tax information, the panel's comments, and the council response to the application. You assert that portions of the submitted information are protected from disclosure under sections 552.101, 552.104, and 552.110.

We note that this request for a decision concerning whether the information sought must be released is not timely made. The council received the request on March 25, 1998. You did not seek a decision from this office until May 19, 1998. The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

A demonstration that the information at issue implicates third party interests and is confidential under sections 552.101 and 552.110 overcomes the section 552.302 presumption that the information is public. However, since section 552.104 is intended to protect governmental interests it does not constitute a compelling reason to overcome this presumption. We, therefore, do not consider the applicability of section 552.104. Please note that in determining the applicability of section 552.101 and 552.110, we review only the actual information sought by the requestor. You argue against release of the entire grant application and attachments, but we note that since the requestor asks for only certain information, the other information on the grant application is not at issue.¹

¹You complain that redacting material from the applications "would constitute a substantial amount of time that would significantly impede the regular course of business." We note that the Open Records Act provides for recovery of certain costs, as set out by rules of the General Service Commission ("GSC"). For more information about the GSC cost provisions, you may contact the General Services Commission at (512) 475-2497.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. However, none of the information sought concerning the grant applicants and applications is the type of information that is protected from disclosure under section 552.101. Open Records Decision No. 455 (1987) (names, home addresses and telephone numbers not generally protected by common-law privacy.)

Section 552.110 provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Section 552.110 refers to two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. None of the information requested is the type of information that is protected from disclosure under section 552.110. We note that while some of the information in the grant applications and attachments may be confidential, the requested information is not confidential and must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 117271

Enclosures: Submitted documents

cc: Mr. Benito Alcala
5116 Gano
Houston, Texas 77009
(w/o enclosures)